

Appendix

Additional Details on the CWR

Subject	Old Rule	Proposed Rule	Final Rule
Navigable Waters	Jurisdictional	Same	Same
Interstate Waters	Jurisdictional	Same	Same
Territorial Seas	Jurisdictional	Same	Same
Impoundments	Jurisdictional	Same	Same
Tributaries to the Traditionally Navigable Waters	Jurisdictional; did not define tributary	Defined tributary for the first time as water features with bed, banks and ordinary high water mark, and flow downstream.	Same as proposal except wetlands and open waters without beds, banks and high water marks will be evaluated for adjacency.
Adjacent Wetlands/Waters	Jurisdiction included wetlands adjacent to traditional navigable waters, interstate waters, the territorial seas, impoundments or tributaries.	Included all waters adjacent to jurisdictional waters, including waters in riparian area or floodplain, or with surface or shallow subsurface connection to jurisdictional waters.	Includes waters adjacent to jurisdictional waters within a minimum of 100 feet and within the 100-year floodplain to a maximum of 1,500 feet of the ordinary high water mark.
Isolated or “Other” Waters	Jurisdiction included all other waters the use, degradation or destruction of which could affect interstate or foreign commerce.	Included “other waters” where there was a significant nexus to traditionally navigable water, interstate water or territorial sea.	Includes specific waters that are similarly situated: Prairie potholes, Carolina & Delmarva bays, pocosins, western vernal pools in California, & Texas coastal prairie wetlands when they have a significant nexus. Includes waters with a significant nexus within the 100-year floodplain of a traditional navigable water, interstate water, or the territorial seas, as well as waters with a significant nexus within 4,000 feet of jurisdictional waters.
Exclusions to the definition of “Waters of the U.S.”	Excluded waste treatment systems and prior converted cropland.	Categorically excluded those in old rule and added two types of ditches, groundwater, gullies, rills and non-wetland swales.	Includes proposed rule exclusions, expands exclusion for ditches, and also excludes constructed components for MS4s and water delivery/reuse and erosional features.

Message

From: Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]
Sent: 5/26/2017 1:50:42 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: Fwd: responding to OMB's comments on draft proposed rule

Morning!

I think you could take **Deliberative Process / attorney client Ex. 5**

Deliberative Process / attorney client Ex. 5 Would recommend the broader distribution list (Wednesday meeting group) when you get the go ahead.

Thanks!!

John

Sent from my iPhone

Begin forwarded message:

From: "Neugeboren, Steven" <Neugeboren.Steven@epa.gov>
Date: May 25, 2017 at 6:03:12 PM PDT
To: "Eisenberg, Mindy" <Eisenberg.Mindy@epa.gov>, "Shapiro, Mike" <Shapiro.Mike@epa.gov>
Cc: "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Peck, Gregory" <Peck.Gregory@epa.gov>, "Kwok, Rose" <Kwok.Rose@epa.gov>, "Kupchan, Simma" <Kupchan.Simma@epa.gov>, "Wehling, Carrie" <Wehling.Carrie@epa.gov>, "Wendelowski, Karyn" <wendelowski.karyn@epa.gov>
Subject: RE: responding to OMB's comments on draft proposed rule

Since we have had prior deliberations on **Deliberative Process / attorney client Ex. 5**
Deliberative Process / attorney client Ex. 5 how about in the rationale for number 2 we simply add after the first sentence something like: **Deliberative Process / attorney client Ex. 5**

Deliberative Process / attorney client Ex. 5

In other words, just tee up for the decision-makers that **Deliberative Process / attorney client Ex. 5**
Deliberative Process / attorney client Ex. 5 Of course, if OW thinks that option should be **Deliberative Process / attorney client Ex. 5**
but I think **Deliberative Process / attorney client Ex. 5**

Note that **Deliberative Process / attorney client Ex. 5**

Deliberative Process / attorney client Ex. 5

This gets a little complicated because the corps is really describing **Deliberative Process / attorney client Ex. 5**

Deliberative Process / attorney client Ex. 5

So it's multi-layered. My best advice is to **Deliberative Process / attorney client Ex. 5**

Deliberative Process / attorney client Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Eisenberg, Mindy
Sent: Thursday, May 25, 2017 6:08 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>
Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: responding to OMB's comments on draft proposed rule

Thanks Mike. Since the third floor didn't seem to want to want to **Deliberative Process / Ex. 5**
Deliberative Process / Ex. 5? We could re-write the rationale to shorten
or under the recommendation offer to have further conversations about **Deliberative Process / Ex. 5**

Mindy

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Shapiro, Mike
Sent: Thursday, May 25, 2017 5:50 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: RE: responding to OMB's comments on draft proposed rule

Mindy,

I generally agree with the responses, although #2 gives me pause. I understand that what OMB
is asking for is for us to **Deliberative Process / Ex. 5**

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Mike

Michael Shapiro
Acting Assistant Administrator, Office of Water
US EPA, 4101M
1200 Pennsylvania Ave., NW
Washington, DC 20460

From: Eisenberg, Mindy
Sent: Thursday, May 25, 2017 4:49 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>
Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>
Subject: responding to OMB's comments on draft proposed rule

Mike,

EPA/Corps/Army staff have reviewed the interagency comments and have addressed most of those comments (see attached which shows comments and track-changes; Julie H has a few additional edits underway). There are four key issues that we are raising for your attention and for feedback before sharing with senior leadership. We've summarized each outstanding issue, plus our recommended approach to addressing each issue. Please let me know how you would like to proceed in sharing with Sarah and others.

Thanks

Issue #1:

Deliberative Process / Ex. 5

Recommended Position:

Deliberative Process / Ex. 5

Rationale:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Issue #2:

Deliberative Process / Ex. 5

Recommended Position:

Deliberative Process / Ex. 5

Rationale:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Issue #3:

Deliberative Process / Ex. 5

Recommended Position:

Deliberative Process / Ex. 5

Rationale:

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Issue #4:

Deliberative Process / Ex. 5

Recommended Position:

Deliberative Process / Ex. 5

Rationale:

Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

Message

From: Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]
Sent: 5/19/2017 6:25:09 PM
To: Rose Kwok [Kwok.Rose@epa.gov]
CC: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Donna Downing [Downing.Donna@epa.gov]
Subject: FW: ADVANCE NOTIFICATION: Special issue in JAWRA on connectivity (all papers included): Comments requested by June 7
Attachments: 6. Goodrich et al. JAWRA_SW-Eph-Int-2016-10-as-sub_corrected.pdf; 4. Lane et al JAWRA non-floodplain_wetland_connectivity.clearance.pdf; 3. Fritz_etal-JAWRA feature MS.PDF; 2. Leibowitz-CONNAP17-Manuscript Final.pdf; Schofield et al. _JAWRA_submitted for IOAA_051517.docx; JAWRA collection fact sheet.16May2017.docx; Alexander et al. JAWRA_ConnOverview_submitted for IOAA_05-16-17.docx; JAWRA Connectivity.Final abstracts_05-16-17.docx

Heads up that these are on the way.

Probably some utility in reviewing the principles of our review with Benita and Mike before the 7th.

Thanks

John

From: vanDrunick, Suzanne

Sent: Friday, May 19, 2017 10:04 AM

To: Reiley, Mary <Reiley.Mary@epa.gov>; Ohanian, Edward <Ohanian.Edward@epa.gov>; Emerson, Vanessa <emerson.vanessa@epa.gov>

Cc: Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Goodin, John <Goodin.John@epa.gov>

Subject: ADVANCE NOTIFICATION: Special issue in JAWRA on connectivity (all papers included): Comments requested by June 7

Dear Mary, Ed and Vanessa,

Please find attached a very well presented set of manuscripts intended for a special issue of the *Journal of the American Water Research Association*. The journal invited the authors of the 2015 connectivity report to publish a collection of papers based on the report (and updated with more recent literature if appropriate). In addition to the manuscripts, attached are a 1-pager and an additional document that includes the abstracts from all the manuscripts.

Note: All of manuscripts are attached in this email from NCEA because of NCEA's significant role in developing the connectivity report and because it coordinated the development of the manuscripts for the special issue. I believe you have already seen the Leibowitz paper. The two NCEA first-authored papers for review are:

- Schofield et al. _JAWRA_submitted for IOAA_051517.docx
- Alexander et al. JAWRA_ConnOverview_submitted for IOAA_05-16-17.docx

The authors have been been cognizent of the need to be consistent in our

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Comments on any policy related issues in the new papers would be appreciated by June 7.

CC'ing Benita and John as a follow up to earlier conversations.

Thank you,

Suzanne

Message

From: Goodin, John [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=3EAC342F280A4B9DB4079C81F66D1913-JGOODIN]
Sent: 5/9/2017 8:08:36 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]
Subject: Re: WOTUS PRESS RELEASE.....FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

Sent from my iPhone

On May 9, 2017, at 4:02 PM, Eisenberg, Mindy <Eisenberg.Mindy@epa.gov> wrote:

I sent a note to Liz and Sarah noting

Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Goodin, John
Sent: Tuesday, May 09, 2017 4:02 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: Fwd: WOTUS PRESS RELEASE.....FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Sent from my iPhone

Begin forwarded message:

From: "Bravo, Antonio" <Bravo.Antonio@epa.gov>
Date: May 9, 2017 at 3:06:37 PM EDT
To: "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Connors, Sandra" <Connors.Sandra@epa.gov>
Cc: "Chancey, Barbara" <Chancey.Barbara@epa.gov>
Subject: FW: WOTUS PRESS RELEASE.....FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

FYI.

Deliberative Process / Ex. 5

From: Bravo, Antonio
Sent: Tuesday, May 09, 2017 3:01 PM
To: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: WOTUS PRESS RELEASE.....FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3

pm
Importance: High

FYI.



CONTACT:
press@epa.gov

FOR IMMEDIATE RELEASE
May 9, 2017

EPA and U.S. Army Solicit State Input on Redefining “Waters of the U.S.”

*“EPA is restoring states’ important role in the regulation of water” –
Administrator Pruitt*

WASHINGTON – U.S. Environmental Protection Agency and the U.S. Army sent a letter to governors today soliciting input from states on a new definition of protected waters that is in-line with a Supreme Court Justice Antonin Scalia’s opinion in the 2006 Rapanos v. United States case. Scalia’s definition explains that federal oversight should extend to “relatively permanent” waters and wetlands with a “continuous surface connection” to large rivers and streams.

“EPA is restoring states’ important role in the regulation of water,” **said EPA Administrator Scott Pruitt**. “Like President Trump, I believe that we need to work with our state governments to understand what they think is the best way to protect their waters, and what actions they are already taking to do so. We want to return to a regulatory partnership, rather than regulate by executive fiat.”

"The Army, together with the Corps of Engineers, is committed to working closely with and supporting the EPA on these rulemakings. As we go through the rulemaking process, we will continue to make the implementation of the Clean Water Act Section 404 regulatory program as transparent as possible for the regulated public, " **said Douglas Lamont, senior official performing the duties of the Assistant Secretary of the Army for Civil Works.**

The Clean Water Act asserts federal control over “traditionally navigable waters” without providing clarity or details about the law’s scope. President Donald Trump signed an executive order on February 28, 2017 to direct federal agencies to roll back and replace the Obama Administration’s Clean Water Rule – also known as the “Waters of the U.S.” or WOTUS – to ensure that the nation’s navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of Congress and the States under the Constitution.

To meet the objectives of the executive order, federal agencies are following a two-step process that will provide as much certainty as possible, as quickly as possible, to the regulated community and the public during the development of the replacement rule.

The first step is to revise the Code of Federal Regulations to re-codify the definition of “Waters of the United States” which currently governs administration of the Clean Water Act, in light of a decision by the U.S. Court of Appeals for the Sixth Circuit staying a definition of “Waters of the United States” promulgated by the agencies in 2015. This action will simply make the text of the Code of Federal Regulations reflect the definition currently in effect under the Sixth Circuit stay. This action, when final, will not change current practice with respect to the how the definition applies, which is consistent with Supreme Court decisions, agency guidance documents, and longstanding practice.

The second step will be a public notice-and-comment rulemaking involving a substantive reevaluation and revision of the definition of “Waters of the U.S.” in accordance with the executive order. The letter sent to governors today is seeking input on the second step of the process.

R079

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:57 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Just forwarded the press release – it went live at 11am today.

From: Kwok, Rose
Sent: Tuesday, May 09, 2017 2:54 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

From: Christensen, Damaris
Sent: Tuesday, May 09, 2017 2:53 PM
To: Bravo, Antonio <Bravo.Antonio@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

From: Bravo, Antonio
Sent: Tuesday, May 09, 2017 2:50 PM
To: Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>; Fuld, John <Fuld.John@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Deliberative Process / Ex. 5

From: Cook-Shyovitz, Becky
Sent: Tuesday, May 09, 2017 2:42 PM
To: Christensen, Damaris <Christensen.Damaris@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

We are currently in the process of emailing the letters to each governors' office (all states and territories), and the hard copies will go in the mail soon.

From: Christensen, Damaris
Sent: Tuesday, May 09, 2017 2:37 PM
To: Kwok, Rose <Kwok.Rose@epa.gov>; Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Cook-Shyovitz, Becky <Cook-Shyovitz.Becky@epa.gov>
Cc: Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

I was in the process of writing an email very similar to Rose's.

I'm copying Becky Cook-Shyovitz in OCIR, because she could weigh in on when the letters were actually mailed and the specific addressees. Becky, see the media request below –

Damaris

From: Kwok, Rose
Sent: Tuesday, May 09, 2017 2:35 PM
To: Bravo, Antonio <Bravo.Antonio@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Downing, Donna <Downing.Donna@epa.gov>
Subject: RE: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Hi Antonio,

1. It's my understanding that the governor's letters went out to the governors of all 50 states plus the U.S. territories.
2. The letters were signed yesterday, I believe, but I'm not sure when they were mailed – Mindy or Damaris, do you know?

From: Bravo, Antonio
Sent: Tuesday, May 09, 2017 2:26 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Kwok, Rose <Kwok.Rose@epa.gov>
Subject: FW: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

QUESTION:

1. Did all 50 state governors receive a copy of the letter attached in the press release? If not, which governors received one?
2. Were all letters sent today, or on May 8, the date on the Branstad letter?

From: Fuld, John
Sent: Tuesday, May 09, 2017 2:16 PM
To: Bravo, Antonio <Bravo.Antonio@epa.gov>
Cc: Campbell, Ann <Campbell.Ann@epa.gov>
Subject: MEDIA INQUIRY CQ Roll Call RE: WOTUS DL: 3 pm

Office of Water Media Inquiry

John W. Fuld, Ph.D.
U.S. Media Relations Mgr.-Water
fuld.john@epa.gov

DATE: May 9, 2017
OUTLET: CQ Roll Call
REPORTER: Jackie Toth
TOPIC: RE: WOTUS News Release
DEADLINE: 3 pm
OW PROGRAM OFFICE: OWOW
PERTINENT INFORMATION:

Two questions on the WOTUS state input news release.

QUESTION:

1. Did all 50 state governors receive a copy of the letter attached in the press release? If not, which governors received one?
2. Were all letters sent today, or on May 8, the date on the Branstad letter?

For Context – Internal Only {to be included in addendum}

BACKGROUNDER: *(background on the issue. What is it? The objective? Is it bipartisan? Is it publicly avail? Are we making news with discussing this for the first time? Have we discussed it publicly before? Where? Listserv? Meeting? Webinar? Press Release? Speech?)*

INFORMATION PUBLICLY AVAILABLE: *(LIST SOURCE WITH EACH ANSWER)*

PROGRAM MESSAGE AND ANSWERS:

John W. Fuld, Ph.D.

U.S. Media Relations Manager Office of Water
Environmental Protection Agency
1200 Constitution Ave
Washington DC 20460
Office: 202-564-8847
Cell: Personal Phone / Ex. 6
Fuld.john@epa.gov

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Goodin, John
Sent: Wed 5/3/2017 12:05:18 PM
Subject: Fwd: Agendas for Tomorrow's Agricultural Stakeholders Meeting (9AM)
[Revised Agricultural Stakeholders Meeting Agenda \(ANNOTATED\).docx](#)
[ATT00001.htm](#)

FYI

Sent from my iPhone

Begin forwarded message:

From: "Lousberg, Macara" <Lousberg.Macara@epa.gov>
Date: May 3, 2017 at 8:03:23 AM EDT
To: "Thomas, Latosha" <Thomas.Latosha@epa.gov>, "Shapiro, Mike" <Shapiro.Mike@epa.gov>, "Best-Wong, Benita" <Best-Wong.Benita@epa.gov>, "Campbell, Ann" <Campbell.Ann@epa.gov>, "Spraul, Greg" <Spraul.Greg@epa.gov>, "Ruf, Christine" <Ruf.Christine@epa.gov>, "Grevatt, Peter" <Grevatt.Peter@epa.gov>, "Wadlington, Christina" <Wadlington.Christina@epa.gov>, "Gonzalez, Yvonne V." <Gonzalez.Yvonne@epa.gov>, "Sawyers, Andrew" <Sawyers.Andrew@epa.gov>, "Farris, Erika D." <Farris.Erika@epa.gov>, "Southerland, Elizabeth" <Southerland.Elizabeth@epa.gov>, "Christensen, Christina" <Christensen.Christina@epa.gov>, "Goodin, John" <Goodin.John@epa.gov>, "Nandi, Romell" <Nandi.Romell@epa.gov>, "Havard, James" <Havard.James@epa.gov>
Cc: "Penman, Crystal" <Penman.Crystal@epa.gov>, "Evalenko, Sandy" <Evalenko.Sandy@epa.gov>
Subject: RE: Agendas for Tomorrow's Agricultural Stakeholders Meeting (9AM)

Forwarding a slightly revised version of the annotated agenda to reflect that our EO 13777 public listening session already occurred.

From: Thomas, Latosha
Sent: Tuesday, May 02, 2017 4:35 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Grevatt, Peter <Grevatt.Peter@epa.gov>; Wadlington, Christina <Wadlington.Christina@epa.gov>; Gonzalez, Yvonne V. <Gonzalez.Yvonne@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>; Southerland, Elizabeth <Southerland.Elizabeth@epa.gov>; Christensen, Christina <Christensen.Christina@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Havard, James <Havard.James@epa.gov>
Subject: Agendas for Tomorrow's Agricultural Stakeholders Meeting (9AM)

Hi All,

Here are the two versions of tomorrow's agenda for the agricultural stakeholders meeting. Jim Havard will talk about EPA's plans to **Deliberative Process / Ex. 5** Since he has to leave the meeting early, I moved that up as the first topic. Thanks!

Latosha Thomas
U.S. Environmental Protection Agency
Office of Water (On Detail)
(202) 564-0211 (desk)
Personal Phone / Ex. 6 (cell)
thomas.latosha@epa.gov

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Havard, James[Havard.James@epa.gov]
From: Goodin, John
Sent: Tue 5/2/2017 9:29:29 PM
Subject: FW: Agendas for Tomorrow's Agricultural Stakeholders Meeting (9AM)
[Agricultural Stakeholders Meeting Agenda \(5.3.17\).docx](#)
[Agricultural Stakeholders Meeting Agenda \(ANNOTATED\).docx](#)

Thanks, Folks!

From: Thomas, Latosha
Sent: Tuesday, May 02, 2017 4:35 PM
To: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Campbell, Ann <Campbell.Ann@epa.gov>; Spraul, Greg <Spraul.Greg@epa.gov>; Lousberg, Macara <Lousberg.Macara@epa.gov>; Ruf, Christine <Ruf.Christine@epa.gov>; Grevatt, Peter <Grevatt.Peter@epa.gov>; Wadlington, Christina <Wadlington.Christina@epa.gov>; Gonzalez, Yvonne V. <Gonzalez.Yvonne@epa.gov>; Sawyers, Andrew <Sawyers.Andrew@epa.gov>; Farris, Erika D. <Farris.Erika@epa.gov>; Southerland, Elizabeth <Southerland.Elizabeth@epa.gov>; Christensen, Christina <Christensen.Christina@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Nandi, Romell <Nandi.Romell@epa.gov>; Havard, James <Havard.James@epa.gov>
Subject: Agendas for Tomorrow's Agricultural Stakeholders Meeting (9AM)

Hi All,

Here are the two versions of tomorrow's agenda for the agricultural stakeholders meeting. Jim Havard will talk about EPA's plans to **Deliberative Process / Ex. 5** since he has to leave the meeting early, I moved that up as the first topic. Thanks!

Latosha Thomas
U.S. Environmental Protection Agency
Office of Water (On Detail)
(202) 564-0211 (desk)
Personal Phone / Ex. 6 (cell)
thomas.latosha@epa.gov

To: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]
From: Goodin, John
Sent: Mon 4/24/2017 9:40:55 PM
Subject: RE: draft tribal webinar slides

Probably Robert Stevens, but could be Macara Lousberg

From: Eisenberg, Mindy
Sent: Monday, April 24, 2017 5:35 PM
To: Goodin, John <Goodin.John@epa.gov>
Subject: RE: draft tribal webinar slides

OK thanks. Do you know who Latosha actually reports to?

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Goodin, John
Sent: Monday, April 24, 2017 5:32 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: RE: draft tribal webinar slides

Thanks. As for attendees, not sure we need too many more, but maybe Steve too.

From: Eisenberg, Mindy
Sent: Monday, April 24, 2017 5:29 PM
To: Goodin, John <Goodin.John@epa.gov>
Subject: draft tribal webinar slides

John,
We had a good call with R9 about the RTOC next week.

For Thursday's webinar, here is the draft powerpoint. Damaris will be working on the run of show which we will share with you tomorrow.

Damaris said she could try to call in for an outreach meeting if it is on Friday, so I'll put in the request for Friday or early next week and see what schedules work out to be. Who do you think needs to be there besides Mike/you/Sarah/Liz/me/Damaris?

thanks

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Monday, April 24, 2017 5:17 PM
To: Ebbert, Laura <Ebbert.Laura@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>;

Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Mojica Hernandez, Ruben <mojica-hernandez.ruben@epa.gov>; Louis, Gail <Louis.Gail@epa.gov>

Cc: Gude, Karen <Gude.Karen@epa.gov>; Kwok, Rose <Kwok.Rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: RE: WOTUS Information Session at May R9 RTOC Meeting

Still draft, but a slightly later version per our discussion today.

Damaris

From: Christensen, Damaris

Sent: Monday, April 24, 2017 11:22 AM

To: Ebbert, Laura <Ebbert.Laura@epa.gov>; Amato, Paul <Amato.Paul@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Bennett, Brittany <bennett.brittany@epa.gov>; Mojica Hernandez, Ruben <mojica-hernandez.ruben@epa.gov>; Louis, Gail <Louis.Gail@epa.gov>

Cc: Gude, Karen <Gude.Karen@epa.gov>; Kwok, Rose <kwok.rose@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: RE: WOTUS Information Session at May R9 RTOC Meeting

Here's the DRAFT powerpoint.

Damaris

-----Original Appointment-----

From: Christensen, Damaris

Sent: Saturday, April 22, 2017 10:56 PM

To: Christensen, Damaris; Ebbert, Laura; Amato, Paul; Brush, Jason; Eisenberg, Mindy; Bennett, Brittany; Mojica Hernandez, Ruben; Louis, Gail

Cc: Gude, Karen; Kwok, Rose; Wesson, Dolores

Subject: WOTUS Information Session at May R9 RTOC Meeting

When: Monday, April 24, 2017 3:30 PM-4:00 PM (UTC-05:00) Eastern Time (US & Canada).

Where: DCRoomWest7129/DC-CCW-OWOW also Nonresponsive Conference Code/ Ex. 6

Hi all,

Call-in: Nonresponsive Conference Code/ Ex. 6

This is to touch base about the R9 RTOC tribal info session/ leader to leader consultation. Karen is Personal Matters / Ex. 6 but then Personal Matters / Ex. 6 so we'll make sure to coordinate here at HQ.

I'm attaching the tribal consultation letter that went out Thursday, and Karen's email below initially reaching out to Laura. We have a draft powerpoint as well and I'll try to send a copy of that when we get a few more comments from people.

I do have one question for you all: is this meeting set-up likely to allow for people from EPA HQ or Corps HQ to call in?

Damaris

Rose – since you have another meeting scheduled tentatively at this time, and will be in Utah at another meeting May 3-4, don't feel you have to attend this, but consider it an FYI.

From: Gude, Karen

Sent: Tuesday, April 18, 2017 7:13 AM

To: Ebbert, Laura <Ebbert.Laura@epa.gov>

Cc: Christensen, Damaris <Christensen.Damaris@epa.gov>; Wesson, Dolores <Wesson.Dolores@epa.gov>

Subject: Seeking WOUS Information Session at May R9 RTOC Meeting, if Possible

Laura,

Hi. I wanted to follow up to our conversation late last week with regard to the possibility of scheduling an information session for tribes with regard to the upcoming tribal consultation and coordination on a forthcoming proposal to rescind and then revise the definition of "waters of the United States." (Clean Water Rule: Definition of "Waters of the United States"; Final Rule, 80 Fed. Reg. 37,054 (June 29, 2015)). If possible, we would like to schedule a session with tribes on May 4 as part of the Region 9 RTOC meeting, structuring the meeting as an information session with tribes, followed by a few minutes reserved for government-to-government consultation and/or tribal comments to allow tribes that are willing and/or able to provide input.

I'm including some background information on this effort below. OW plans to initiate tribal consultation as early as this week. I'm cc'ing Damaris Christensen and Delores Wesson, both of OW/OWOW, who have been working on the tribal consultation preparations related to this action, for awareness. OWOW is working to confirm a point person to present information/manage the tribal information session at the R9 RTOC meeting.

Any assistance in coordinating and/or scheduling a session at the RTOC would be greatly appreciated. If you should have any questions or concerns or should need any additional information from us, please do not hesitate to let me know.

Background information:

On February 28, the President issued an Executive Order on "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule." The EO states that it is in the national interest to ensure that the nation's navigable waters are kept free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard for the roles of the Congress and the states under the Constitution. The EO directs EPA and ACOE: (1) to review the existing Clean Water Rule (CWR) for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule, as appropriate and consistent with law, and (2) to consider interpreting the term "navigable waters," in a manner consistent with the Scalia opinion in Rapanos v. U.S.

The agencies intend to follow an expeditious, two-step process that will provide certainty across the country: (1) an initial rulemaking to rescind the 2015 rule and reinstate the regulatory approach that, except for a brief two-month period prior to the Sixth Circuit Court of Appeals' stay of the 2015 rule, has been the regulation in place since 1986, and thus maintains the status quo, and (2) a second rulemaking to revise the definition of waters of the U.S. consistent with direction in the E.O. Justice Scalia's Rapanos opinion indicates Clean Water Act jurisdiction includes relatively permanent waters and wetlands with a continuous surface connection to relatively permanent waters.

OW plans to initiate tribal consultation as early as this week. The tribal consultation will focus solely on the rulemaking to revise the definition of WOUS consistent with direction provided in the February 28 EO, not on the withdrawal of the current CWR.

Thank you,

Karen Gude
Tribal Program Coordinator (detail)
U.S. EPA/Office of Water
Phone: (202) 564-0831

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
From: Goodin, John
Sent: Tue 4/18/2017 10:37:47 PM
Subject: Re: WOTUS Federalism Meeting draft materials

Thanks!

Sent from my iPhone

On Apr 18, 2017, at 6:24 PM, Christensen, Damaris <Christensen.Damaris@epa.gov> wrote:

You can see the entire presentation at the following link:

Nonresponsive Internal URL/ Ex. 6

I'm also copying the relevant slides below – please let me know whether you prefer the format of slide 9 and 11 or slide 10 better. It's relatively easy to switch in between, though the text is smaller in the slide 10 version.

<image002.png>

<image003.png>

<image004.png>

From: Goodin, John
Sent: Tuesday, April 18, 2017 5:36 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Folks—just spoke to Mike and he would like to: **Deliberative Process /attorney client Ex. 5**

Deliberative Process /attorney client Ex. 5

We will circulate the revised slides shortly.

Thanks

John

From: Neugeboren, Steven
Sent: Tuesday, April 18, 2017 4:38 PM
To: Peck, Gregory <Peck.Gregory@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Again, this is a policy call so assume OW will make a corporate decision here. **Deliberative Process /attorney client Ex. 5**

Deliberative Process /attorney client Ex. 5

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency
202-564-5488

From: Peck, Gregory
Sent: Tuesday, April 18, 2017 2:18 PM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Not sure I understand Deliberative Process /attorney client Ex. 5
Deliberative Process /attorney client Ex. 5 I agree that Deliberative Process /attorney client Ex. 5

Deliberative Process /attorney client Ex. 5

Right?

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460

202-564-5700

From: Neugeboren, Steven
Sent: Tuesday, April 18, 2017 1:32 PM
To: Peck, Gregory <Peck.Gregory@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

I see greg's as a pretty significant change from mine. This is a policy call, but I was suggesting Deliberative Process /attorney client Ex. 5

Deliberative Process /attorney client Ex. 5

Again, this is a policy call for OW. I just want to make sure that the differences are apparent so you all can decide what options you would like to be reflected here.

Steven Neugeboren
Associate General Counsel
Water Law Office
Environmental Protection Agency

From: Peck, Gregory

Sent: Tuesday, April 18, 2017 12:39 PM

To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>

Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>

Subject: RE: WOTUS Federalism Meeting draft materials

<image005.png>

Gregory E. Peck
Chief of Staff
Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue
Washington, D.C. 20460
Damaris

To: Christensen, Damaris[Christensen.Damaris@epa.gov]
Cc: Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Donna Downing[Downing.Donna@epa.gov]
From: Goodin, John
Sent: Tue 4/18/2017 3:03:06 PM
Subject: RE: WOTUS Federalism Meeting draft materials

Have we heard back from Sarah or Layne yet?

From: Christensen, Damaris
Sent: Tuesday, April 18, 2017 10:52 AM
To: Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

I have updated the powerpoint to reflect Steve's edits, below.

Are there any other edits to the agenda, "run of show" or powerpoint I should be aware of? Once we are set I'd like to get some copies made for tomorrow.

Damaris

From: Neugeboren, Steven
Sent: Tuesday, April 18, 2017 9:57 AM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Wendelowski, Karyn <wendelowski.karyn@epa.gov>; Peck, Gregory <Peck.Gregory@epa.gov>
Subject: RE: WOTUS Federalism Meeting draft materials

Consistent with my suggestions at the meeting today, for your consideration regarding Deliberative Process / Ex. 5



Steven Neugeboren
Associate General Counsel

From: Eisenberg, Mindy
Sent: Monday, April 17, 2017 5:29 PM
To: Greenwalt, Sarah <greenwalt.sarah@epa.gov>
Cc: Shapiro, Mike <Shapiro.Mike@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Best-Wong, Benita <Best-Wong.Benita@epa.gov>; Christensen, Damaris <Christensen.Damaris@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie <Wehling.Carrie@epa.gov>; Fotouhi, David <fotouhi.david@epa.gov>
Subject: WOTUS Federalism Meeting draft materials

Hi Sarah,
Attached are draft materials for Wednesday's federalism meeting for your review. We have the agenda, what we're calling the "run of show" which has your talking points and the flow that we will follow, and the powerpoint. I want to flag slides 9-12 in particular for your review. We are approaching this as **Deliberative Process / Ex. 5** so please let me know if you are comfortable.

The powerpoint will be distributed to those on the phone just before the meeting begins, and the conference number will be sent out on Wednesday. In addition, we will be using an operator assisted number which will require participants to say who they are and their affiliation to try to minimize the chance of uninvited guests attending.

We understand that you had a question about **Deliberative Process / Ex. 5**. Here is a statement that we developed with OCIR in case OPA receives requests.

Thanks!
Mindy

Deliberative Process / Ex. 5

Mindy Eisenberg
Acting Director, Wetlands Division
Office of Wetlands, Oceans and Watersheds
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW, mailcode 4502T
Washington, DC 20460
(202) 566-1290
eisenberg.mindy@epa.gov

From: Christensen, Damaris
Sent: Monday, April 17, 2017 5:18 PM
To: Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>
Subject: WOTUS Federalism Meeting Agenda.docx

Mindy,

Attached are draft materials for Wednesday's federalism meeting: a draft agenda, a draft "run of show" with TPs for senior leaders, and the draft powerpoint. I think slides 9-12 are probably the key ones for senior-level review though of course we welcome any changes.

Please note that we've learned over the course of our federalism consultations that it is important to distribute the powerpoint and plan to have paper copies available at the meeting. In addition, we will distribute a pdf of the presentation just before the meeting begins so those calling in can follow along.

Thanks.

Damaris